

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

LARRY CONLEY, *et al.*,

Plaintiffs,

v.

**THERMO FISHER SCIENTIFIC
INC., *et al.*,**

Defendants.

Civil Action No. 2:24-cv-2078

Judge Edmund A. Sargus, Jr.

Magistrate Judge Elizabeth P. Deavers

ORDER

This matter is before the Court on the Parties' Joint Motion to Substitute Parties. (Mot., ECF No. 15.) The Parties move for an order dismissing Thermo Fisher Scientific, Inc. ("Thermo Fisher") and Doe Corporation as Defendants and adding Thermo Fisher Scientific (Asheville) LLC ("Thermo Fisher Asheville") as a Defendant. (*Id.* PageID 72.) Plaintiffs do not oppose the Motion. (*Id.*)

I. BACKGROUND

On February 3, 2022, Plaintiff Larry Conley incurred personal injuries from falling from an allegedly defective ladder at Defendants' facility while delivering liquid nitrogen to the facility. (Compl., ECF No. 2, ¶¶ 10–14.) Plaintiff Charlene Conley, Mr. Conley's wife, alleges that she suffered a loss of consortium due to the injuries her husband suffered from the incident. (*Id.*, ¶¶ 27–29.) Plaintiffs commenced this action by filing a Complaint in the Washington County, Ohio Court of Common Pleas. (Compl.) Thermo Fisher answered the Complaint and asserted that it did not own the facility where Mr. Conley was allegedly injured and that the facility was owned and operated by Thermo Fisher Asheville. (Am. Answer, ECF No. 4, ¶ 3.) Defendants then removed the action to this Court (Not. of Removal, ECF No. 1), and later moved to substitute Defendants with Thermo Fisher Asheville (Mot., ECF No. 15).

II. ANALYSIS

Rules 15 and 21 of the Federal Rules of Civil Procedure are the proper procedural mechanisms to amend the pleadings and change parties to a suit. *Borris v. Enter. Tech. Assistance Servs.*, Case No. 2:20-cv-5664, 2024 U.S. Dist. LEXIS 35207, at *3 (S.D. Ohio Feb. 29, 2024). Rule 21 gives the Court discretion, on its own or by motion, to add or drop a party, or sever any claim against a party. Fed. R. Civ. P. 21 (“On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party.”). The Court is vested with great discretion in determining whether to add or drop parties or to order severance. *In re E. I. du Pont de Nemours & Co. C-8 Pers. Injury Litig.*, No. 2:13-md-2433, 2014 U.S. Dist. LEXIS 117721, at *25 (S.D. Ohio Aug. 21, 2014) (citation omitted).

Generally, what can be accomplished by court order under Rule 21 may also be accomplished by amending the pleadings under Rule 15. *See* 4 James M. Moore, et al., *Moore’s Federal Practice* § 21.02 (3d ed. 2007). Pursuant to Rule 15(a)(2), if a party cannot amend as a matter of course, it may amend its pleading “with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2).

The Parties explain that Thermo Fisher Asheville was the owner and operator of the facility where Mr. Conley’s injury occurred and is therefore the proper defendant. (Mot., PageID 73.) Thermo Fisher Asheville is not a citizen of the State of Ohio, and adding Thermo Fisher Asheville as a party will not destroy the Court’s diversity jurisdiction. (*Id.*) The Court **GRANTS** the Parties’ Joint Motion to Substitute (ECF No. 15), **ADDS** as a Defendant Thermo Fisher Scientific (Asheville) LLC, and **DISMISSES** Defendants Thermo Fisher Scientific, Inc. and Doe Corporation. The Court **ORDERS** that the caption of this case shall be **AMENDED** to reflect Thermo Fisher Scientific (Asheville) LLC as the sole defendant in this matter.

The Parties also advise the Court that they have reached an agreement that neither party would need to replead as a result of the substitution. (Mot., PageID 73.) Pursuant to the Parties' stipulation, the allegations in the Complaint asserted against Thermo Fisher will be construed as directed toward Thermo Fisher Asheville. The defenses, denials, and responses raised by Thermo Fisher in its Answer and Amended Answer will be construed as made on behalf of the newly added Defendant Thermo Fisher Asheville.

This case remains open.

IT IS SO ORDERED.

12/5/2024
DATE

s/Edmund A. Sargus, Jr.
EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE